UNITED STATES PATENT AND TRADEMARK OFFICE

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09/671,571	09/27/2000	Avery Li-Chun Wang	069323-P002US	4634

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

PTOL-90A (Rev. 04/07)

	Application No.	Applicant(s)
Office Action Summary	09/671,571	WANG ET AL.
	Examiner	Art Unit	
	Azizul Choudhury	2145	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>27 February 2007</u>.

2a)☒ This action is **FINAL.**   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>35-47 and 49-96</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>35-47 and 49-96</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on <u>22 January 2002</u> is/are: a)☒ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date <u>3/20/07</u>.

4)☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

Detailed Action

This office action is in response to the correspondence received on February 27, 2007.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 35-44, 47, 49-51, 53-62, 85-90 and 95-96 are rejected under 35

U.S.C. 102(e) as being anticipated by Kenyon et al (US Patent Number:

US007194752B1), hereafter referred to as Kenyon.

1.   With regards to claim 35, Kenyon teaches a method for providing a transaction to a

user exposed to a media stream, the method comprising the steps of: receiving a signal

including a captured sample of the media stream from the user, the media stream

comprising music (column 5, lines 28-30, Kenyon); determining from the signal a

characteristic of the captured sample (column 5, lines 27-43, Kenyon); determining the

identity of the captured sample using the signal characteristic (column 5, lines 44-57,

Kenyon); and triggering a predetermined transaction with the user involving the music

identified in the captured sample (column 1, lines 21-31, Kenyon).

2.   With regards to claim 36, Kenyon teaches the method, wherein the predetermined

transaction includes sales and purchase of merchandise (column 1, lines 21-31,

Kenyon).

3.   With regards to claim 37, Kenyon teaches the method wherein the predetermined

transaction includes an offer for sale of merchandise (column 1, lines 21-31, Kenyon).

4.   With regards to claim 38, Kenyon teaches the method wherein the offer for sale of

merchandise includes an offer to sell recordings of music (column 1, lines 21-31,

Kenyon).

5.   With regards to claim 39, Kenyon teaches the method wherein the recording is

related to a characteristic of the captured sample (column 6, lines 9-24, Kenyon).

6.   With regards to claim 40, Kenyon teaches the method wherein the predetermined

transaction includes furnishing and receiving information (column 1, lines 21-31,

Kenyon).

7.   With regards to claim 41, Kenyon teaches the method wherein the predetermined

transaction includes delivery of advertising or promotional offers (column 1, lines 21-31,

Kenyon).

8.   With regards to claim 42, Kenyon teaches the method wherein the promotional

offers include free trials (column 1, lines 21-31, Kenyon).

9.   With regards to claim 43, Kenyon teaches the method wherein the promotional

offers includes offers to sell merchandise or services at discounted prices (column 1,

lines 21-31, Kenyon).

10.   With regards to claim 44, Kenyon teaches the method wherein the predetermined

transaction includes an exchange of information between a sales source and the user

attendant to a sale of merchandise or services to a user (column 1, lines 21-31,

Kenyon).

11.   With regards to claim 47, Kenyon teaches a method for identifying music to a user

comprising: receiving a signal including a captured sample of the music from the user;

wherein the music is received by the user via radio broadcast and the captured sample

includes a sample of the radio broadcast (column 9, lines 22-44, Kenyon); determining

from the signal a characteristic of the captured sample (column 5, lines 27-43, Kenyon);

comparing the characteristic of the captured sample to a characteristic associated with

an identity records contained in a database (column 5, lines 44-57, Kenyon); and

locating an identity record corresponding to the captured sample according to a result of

the comparison (column 5, lines 44-57, Kenyon).

12. With regards to claim 49, Kenyon teaches the method further including returning the identity record to the user (column 16, lines 1-11, Kenyon).

13. With regards to claim 50, Kenyon teaches the method further including offering to sell to the user a recording including at least a song which corresponds to the located identity record (column 1, lines 21-31, Kenyon).

14. With regards to claim 51, Kenyon teaches the method further including offering to provide to the user information relating to the located identity record (column 16, lines 1-11, Kenyon).

15. With regards to claim 53, Kenyon teaches the method further including a step of offering to sell merchandise (column 1, lines 21-31, Kenyon).

16. With regards to claim 54, Kenyon teaches the method wherein the merchandise relates to the located identity record (column 1, lines 21-31, Kenyon).

17. With regards to claim 55, Kenyon teaches the method further including a step of offering sell live performance tickets (column 1, lines 21-31, Kenyon).

18. With regards to claim 56, Kenyon teaches the method wherein the live performance tickets relate to the located identity record (column 1, lines 21-31, Kenyon).

19. With regards to claim 57, Kenyon teaches the method further including a step of offering sell record albums to be released at a future time (column 1, lines 21-31, Kenyon).

20. With regards to claim 58, Kenyon teaches the method wherein the live performance tickets relate to the located identity record (column 1, lines 21-31, Kenyon).

21. With regards to claim 59, Kenyon teaches the method wherein the information further includes information pertaining to a location of retail music establishments that are in close proximity to the user (column 1, lines 21-31, Kenyon).

22. With regards to claim 60, Kenyon teaches the method further including downloading media to a user device (column 1, lines 21-31, Kenyon).

23. With regards to claim 61, Kenyon teaches the method wherein the downloaded media includes a pre-recorded song corresponding to the located identity record (column 1, lines 21-31, Kenyon).

24. With regards to claim 62, Kenyon teaches the method wherein the user device is selected from the group consisting of PCs, PDAs, internet access devices, wireless internet devices, mobile telephones, wireless information devices and pagers (column 9, lines 39-45, Kenyon).

25. With regards to claim 85, Kenyon teaches a method for identifying music to a user exposed to a broadcast that includes unidentified music, comprising: receiving a signal including a captured sample of the broadcast from the user, said broadcast comprising music (column 9, lines 22-44, Kenyon); determining from the signal a characteristic of the captured sample (column 5, lines 27-43, Kenyon); comparing the characteristic of the captured sample to a characteristic associated with an identity record contained in a database (column 5, lines 44-57, Kenyon); attempting to locate an identity record corresponding to the captured sample according to a result of the comparison (column 5, lines 44-57, Kenyon); and storing the captured sample if the location attempt is unsuccessful (column 5, lines 42-43, Kenyon).

26. With regards to claim 86, Kenyon teaches the method further including delivering the captured sample to remote locations (Figure 1, Kenyon).

27. With regards to claim 87, Kenyon teaches the method wherein the delivered captured samples are used in games or contests involving attempts to identify the unidentified music (column 1, lines 21-31, Kenyon).

28. With regards to claim 88, Kenyon teaches a method for identifying music to a user exposed to a broadcast that includes unidentified music, comprising: receiving a signal including a captured sample of the broadcast from the user said broadcast comprising music (column 9, lines 22-44, Kenyon); determining from the signal a characteristic of the captured sample (column 5, lines 27-43, Kenyon); comparing the characteristic of the captured sample to a characteristic associated with an identity record contained in a database (column 5, lines 44-57, Kenyon); attempting to locate an identity record corresponding to the captured sample according to a result of the comparison (column 5, lines 44-57, Kenyon); and providing an interactive interface for the user to store manipulate data associated with a successfully located identity record (column 5, lines 42-43, Kenyon).

29. With regards to claim 89, Kenyon teaches the method wherein the interface is selected from the group consisting of real-time interfaces, offline interfaces, and combinations thereof (The interface is real-time (column 6, lines 9-24, Kenyon) but is also able to be offline since captured voice commands must be saved (column 5, lines 42-43, Kenyon)).

30. With regards to claims 90, 95 and 96, Kenyon teaches the method wherein the offline interface is selected from the group consisting of internet browsers, email, SMS messaging and combinations thereof (Kenyon discloses how the interface can be online

(column 7, lines 9-11, Kenyon) and services can be personalized (column 1, lines 21-31, Kenyon)).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 45-46, 52, 63-84 and 91-94 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kenyon in view of Pocock (US Pat No: US005661787A).

31. With regards to claim 45, Kenyon teaches through Pocock, the method wherein the offer is selected in response to a profile to the user

(Kenyon's design allows for a user to identify music (column 4, lines 55-59, Kenyon). However, no disclosure is made regarding the storage of user profiles.

Pocock teaches a design for a phone based, music and music related items purchasing design. The design allows for a name and address database based on consumer information (column 3, lines 1-9, Pocock). The content within this database is equivalent to the claimed user profile. Both Kenyon and Pocock teach processing of audible signals. Kenyon's design allows for a user to identify music and to provide commercial services based on the identification of music (column 1, lines 21-31 and column 4, lines 55-59, Kenyon) while Pocock's design allows for phone-based music

and music related items purchasing. It would have been obvious to one skilled in the art, during the time of the invention, to have combined the teachings of Kenyon with those of Pocock, to provide an automated transaction system to record and track radio audio segments enabling a radio listener to use their telephone to recall and preview, on-demand, music pieces previously broadcast thereby assisting the listener in the purchase of a music product such as a record album, cassette or CD (column 2, lines 34-43, Pocock)).

32. With regards to claim 46, Kenyon teaches through Pocock, the method wherein the offer is selected in response to history of transactions completed with the user (Pocock teaches a design for a phone based, music and music related items purchasing design. The design allows for a name and address database based on consumer information (column 3, lines 1-9, Pocock). The content within this database is equivalent to the claimed user history).

33. With regards to claim 52, Kenyon teaches through Pocock, the method further including a step of playing a recording of a song corresponding to the located identity to the user (Pocock teaches a design for a phone based, music and music related items purchasing design. The design allows for a user to search through songs to obtain desired song. Other information regarding the song can also be obtained and returned to the user (column 2, lines 47-67, Pocock). This includes playback of songs).

34. With regards to claim 63, Kenyon teaches through Pocock, the method further
including receiving commands from the user in response to the returned identity record
(Pocock teaches a design for a phone based, music and music related items purchasing
design. The design allows for a user to search through songs to obtain desired song.
The user is able to continue to make selections through the keypad of the phone
(receiving commands from the user) in response to the service's offers and requests
(column 14, lines 8-25, Pollack)).

35. With regards to claim 64, Kenyon teaches through Pocock, the method further
including performing an additional predetermined step in response to the command
(Pocock teaches a design for a phone based, music and music related items purchasing
design. The design allows for a user to search through songs to obtain desired song.
The user is able to continue to make selections through the keypad of the phone
(receiving commands from the user) in response to the service's offers and requests. In
addition, the service responds to the commands sent by the user (column 14, lines 8-
25, Pollack)).

36. With regards to claim 65, Kenyon teaches through Pocock, the method wherein the
predetermined step includes delivering a message to a third party (Pocock teaches a
design for a phone based, music and music related items purchasing design. The
design allows for a user to search through songs to obtain desired song. When a user
selects to make a purchase and enters the credit card information, the service

communicates with a credit authorization service (equivalent to claimed delivering a message to a third party) (Figure 1, Pocock)).

37. With regards to claim 66, Kenyon teaches through Pocock, the method wherein the message includes a recommendation of music corresponding to the located identity record (Pocock teaches a design for a phone based, music and music related items purchasing design. The design allows for a user to search through songs to obtain desired song. Other information regarding the song can also be obtained and returned to the user (column 2, lines 47-67, Pocock). In addition, Pocock's design allows for advertisements (offers) and content other than music (column 5, lines 39-48, Pocock). Plus, the content presented for sale can be based on a song just heard (column 4, line 61 – column 5, line 17, Pocock). Hence means are present by which to search databases (communicate with third parties)).

38. With regards to claim 67, Kenyon teaches through Pocock, the method wherein the predetermined step includes a collection of data indicative of music popularity (Pocock teaches a design for a phone based, music and music related items purchasing design. The design allows for a user to search through songs to obtain desired song. Other information regarding the song can also be obtained and returned to the user (column 2, lines 47-67, Pocock). In addition, Pocock's design allows for advertisements (offers) and content other than music (column 5, lines 39-48, Pocock). Plus, the content

presented for sale can be based on a song just heard, or can be found through

browsing (column 4, line 61 – column 5, line 17, Pocock)). ·

39. With regards to claim 68, Kenyon teaches through Pocock, the method wherein the

collected data includes data received from the user (Pocock teaches a design for a

phone based, music and music related items purchasing design. The design allows for

a user to search through songs to obtain desired song. Other information regarding the

song can also be obtained and returned to the user (column 2, lines 47-67, Pocock). In

addition, Pocock's design allows for advertisements (offers) and content other than

music (column 5, lines 39-48, Pocock). Plus, the content presented for sale can be

based on a song just heard, or can be found through browsing (column 4, line 61 –

column 5, line 17, Pocock)).

40. With regards to claim 69, Kenyon teaches through Pocock, the method wherein the

predetermined step includes playing additional songs not associated with the located

identity record to the user (Pocock teaches a design for a phone based, music and

music related items purchasing design. The design allows for a user to search through

songs to obtain desired song. Other information regarding the song can also be

obtained and returned to the user (column 2, lines 47-67, Pocock). In addition,

Pocock's design allows for advertisements (offers) and content other than music

(column 5, lines 39-48, Pocock). Plus, the content presented for sale can be based on

a song just heard, or can be found through browsing (songs not associated with the

located identity record) (column 4, line 61 – column 5, line 17, Pocock)).

41. With regards to claim 70, Kenyon teaches through Pocock, the method wherein the

predetermined step includes locating one or more music performance artists matching a

predetermined criterion (Pocock teaches a design for a phone based, music and music

related items purchasing design. The design allows for a user to search through songs

to obtain desired song. Other information regarding the song can also be obtained and

returned to the user (column 2, lines 47-67, Pocock). In addition, Pocock's design

allows for advertisements (offers) and content other than music (column 5, lines 39-48,

Pocock). Plus, the content presented for sale can be based on a song just heard, or

can be found through browsing (column 4, line 61 – column 5, line 17, Pocock)).

42. With regards to claim 71, Kenyon teaches through Pocock, the method wherein the

criterion includes similarity of the one or more music performance artists to an artist

associated with the located identity record (Pocock teaches a design for a phone based,

music and music related items purchasing design. The design allows for a user to

search through songs to obtain desired song. Other information regarding the song can

also be obtained and returned to the user (column 2, lines 47-67, Pocock). In addition,

Pocock's design allows for advertisements (offers) and content other than music

(column 5, lines 39-48, Pocock). Plus, the content presented for sale can be based on

a song just heard, or can be found through browsing (column 4, line 61 – column 5, line

17, Pocock)).

43.   With regards to claim 72-80 Kenyon teaches through Pocock, the method wherein

the predetermined step includes providing a critical review of a music performance artist

associated with the located identity record (Pocock teaches a design for a phone based,

music and music related items purchasing design. The design allows for a user to

search through songs to obtain desired song. Other information regarding the song can

also be obtained and returned to the user (column 2, lines 47-67, Pocock). In addition,

Pocock's design allows for advertisements (offers) and content other than music

(column 5, lines 39-48, Pocock). Plus, the content presented for sale can be based on

a song just heard, or can be found through browsing (column 4, line 61 – column 5, line

17, Pocock)).

44.   With regards to claim 81, Kenyon teaches through Pocock, the method further

including storing the captured sample (column 5, lines 42-43, Kenyon).

45.   With regards to claim 82, Kenyon teaches through Pocock, the method wherein the

predetermined step includes delivering an excerpt of a recording of a song

corresponding to the located identity record (Pocock teaches a design for a phone

based, music and music related items purchasing design. The design allows for a user

to search through songs to obtain desired song. Other information regarding the song

can also be obtained and returned to the user (column 2, lines 47-67, Pocock). This

includes playback of songs).

46. With regards to claim 83, Kenyon teaches through Pocock, the method wherein the

excerpt is delivered to the user (Pocock teaches a design for a phone based, music and

music related items purchasing design. The design allows for a user to search through

songs to obtain desired song. Other information regarding the song can also be

obtained and returned to the user (column 2, lines 47-67, Pocock). This includes

playback of songs to the user).

47. With regards to claim 84, Kenyon teaches through Pocock, the method wherein the

excerpt is delivered to a third party (Pocock teaches a design for a phone based, music

and music related items purchasing design. The design allows for a user to search

through songs to obtain desired song. Other information regarding the song can also

be obtained and returned to the user (column 2, lines 47-67, Pocock). This includes

playback of songs. The playback can be sent through a phone hence, a phone user

such as the user or a third party is able to receive the playback).

48. With regards to claim 91, Kenyon teaches through Pocock, the method wherein the

interface is arranged to allow the use to store, retrieve and forward the data (Pocock

teaches a design for a phone based, music and music related items purchasing design.

The design allows for a user to search through songs to obtain desired song. Other information regarding the song can also be obtained (column 2, lines 47-67, Pocock)).

49. With regards to claims 92-94, Kenyon teaches through Pocock, the method wherein the interface is arranged to allow the user to communicate with third parties (Column 1, lines 21-31, Kenyon) and (Pocock teaches a design for a phone based, music and music related items purchasing design. The design allows for a user to search through songs to obtain desired song. Other information regarding the song can also be obtained (column 2, lines 47-67, Pocock). When a user selects to make a purchase and enters the credit card information, the service communicates with a credit authorization service (equivalent to claimed delivering a message to a third party) (Figure 1, Pocock)).

50. The motivation applied to claim 45 is applicable to claims 45-46, 52, 63-84 and 91-94.

Response to Remarks

The amendment received on February 27, 2007 has been carefully examined but is not deemed fully persuasive. In lieu of the IDS submitted on March 20, 2007, a new grounds of rejection has been created.

Conclusion

Applicant's submission of an information disclosure statement under 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p) on March 20, 2007 prompted the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 609.04(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Azizul Choudhury whose telephone number is (571) 272-3909. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason Cardone can be reached on (571) 272-3933. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the
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AC

JASON CARDONE
SUPERVISORY PATENT EXAMINER